



6570-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046-AB03

Adjusting the Penalty for Violation of Notice Posting Requirements

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.

DATES: This final rule is effective [insert date 30 days after publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663-4668, or Ashley M. Martin, General Attorney, (202) 663-4695, Office of Legal Counsel, 131 M St. NE., Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY), or to the Publications Information Center at 1-800-669-3362 (toll free).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 711 of the Civil Rights Act of 1964 (Title VII), which is incorporated by reference in section 105 of the Americans with Disabilities Act (ADA) and section 207 of the Genetic Information Non-Discrimination Act (GINA), and 29 CFR 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by Title VII, ADA, or GINA must post notices describing the pertinent provisions of Title VII, ADA, or GINA. Such notices must be posted in prominent and accessible places where notices to employees, applicants, and members are customarily maintained.

The EEOC first adjusted the civil monetary penalty for violations of the notice posting requirements in 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, Sec. 31001(s)(1), 110 Stat. 1373. A final rule was published in the Federal Register on May 16, 1997, at 62 FR 26934, which raised the maximum penalty per violation from \$100 to \$110. The EEOC's second adjustment, made pursuant to the FCPIA Act, as amended by the DCIA, was published in the Federal Register on March 19, 2014, at 79 FR 15220 and raised the maximum penalty per violation from \$110 to \$210.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Pub. L. 114-74, Sec. 701(b), 129 Stat. 599, further amended the FCPIA Act, to require each federal agency, not later than July 1, 2016, and not later than January 15 of every year thereafter, to issue regulations adjusting for inflation the maximum civil

penalty that may be imposed pursuant to each agency's statutes. The purpose of the adjustment is to maintain the remedial impact of civil monetary penalties and promote compliance with the law. These periodic adjustments to the penalty are to be calculated pursuant to the inflation adjustment formula provided in section 5(b) of the 2015 Act and, in accordance with section 6 of the 2015 Act, the adjusted penalty will apply only to penalties assessed after the effective date of the adjustment.

Generally, the periodic inflation adjustment to a civil monetary penalty under the 2015 Act will be based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of adjustment and the prior year's October CPI-U. The initial adjustment made to a civil monetary penalty under the 2015 Act, however, will be based on the percentage change between the CPI-U for the month of October 2015 and the CPI-U for the month of October of the calendar year during which the amount of such civil monetary penalty was established or last adjusted other than pursuant to the FCPIA Act. For the first adjustment made by an agency under the 2015 Act, the maximum amount of the increase in civil monetary penalty may not exceed 150 percent of the amount of that civil monetary penalty as it was on the date of enactment of 2015 Act.

II. Mathematical Calculation

The adjustment set forth in this final rule was calculated by comparing the CPI-U for October 2015 with the CPI-U for October 1964, the calendar year during which the amount of the civil monetary penalty was established, resulting in an inflation adjustment factor of 7.64752. Once the inflation adjustment factor is determined, the first step of the calculation is to multiply the inflation adjustment factor (7.64752) by the civil penalty

amount (\$100) in the year that the penalty was established to calculate the inflation-adjusted penalty level (\$764.752). The second step is to round this inflation-adjusted penalty to the nearest dollar (\$765). The third step is to compare the new inflation-adjusted penalty amount (\$765) with the penalty amount (\$210) reported in the prior year's Agency Financial Report (AFR). Under the 2015 Act, the adjustment amount cannot exceed 150 percent of the last reported penalty (\$210). To achieve an increase of 150 percent, multiply the penalty amount (\$210) last reported in the AFR by 2.5, and round to the nearest dollar (\$525). The final step is to compare the inflation-adjusted penalty amount (\$765) with the penalty amount that is 150 percent more than the last reported penalty level (\$525). The 2015 Act specifies that if the inflation-adjusted penalty amount (\$765) is larger, the 150 percent limit applies, and the increase is limited to 150 percent. Accordingly, we are adjusting the maximum penalty per violation specified in 29 CFR 1601.30(a) from \$210 to \$525.

III. Regulatory Procedures

Administrative Procedure Act

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary, or contrary to the public interest. EEOC finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because this adjustment of the civil monetary penalty is required by the 2015 Act, the formula for calculating the adjustment to the penalty is prescribed by statute, and the Commission has no discretion in determining the amount of the published adjustment.

Accordingly, we are issuing this revised regulation as a final rule without notice and comment.

Executive Order 13563 and 12866

In promulgating this final rule, EEOC has adhered to the regulatory philosophy and applicable principles set forth in Executive Order 13563. Pursuant to Executive Order 12866, the EEOC has coordinated with the Office of Management and Budget (OMB). Under section 3(f) of Executive Order 12866, the EEOC and OMB have determined that this final rule will not have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The great majority of employers and entities covered by these regulations comply with the posting requirement, and, as a result, the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post required notices in violation of the regulation and statute. The rule only increases the penalty by \$315 for each separate offense, nowhere near the \$100 million figure that would amount to a significant regulatory action.¹

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new information collection requirements, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

¹ In the last ten years, the highest number of charges alleging notice posting violations occurred in 2010. In that year, only 114 charges of the 90,837 Title VII, ADA, and GINA charges (.13%) contained a notice posting violation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) only requires a regulatory flexibility analysis when notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (CRA) requires that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EEOC will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the effective date of the rule. Under the CRA, a major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by the CRA at 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure.

For the Commission.

Dated: May 25, 2016

Jenny R. Yang,

Chair

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff-11.

2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

1601.30 Notices to be posted.

* * * * *

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than \$525 for each separate offense.

[FR Doc. 2016-12999 Filed: 6/1/2016 8:45 am; Publication Date: 6/2/2016]